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DW 12-02

Paper No. 12

PATENT ADMINSTRATOR
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE STREET
SUITE 1600
CHICAGO IL 60661-3693

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DEC 04 2002

OFFICE OF PETITIONS

In re Application of :
Bedalov et al. :
Application No. 09/678,952 : ON PETITION
Filed: 3 October, 2000 :
Attorney Docket No. 112913.401 :

This is a decision on the renewed petition under 37 CFR 1.137(b),¹ filed on 21 November, 2002, to revive the above-identified application. This communication is also being treated as a deficiency fee payment filed pursuant to 37 CFR 1.28(c) in view of petitioners' statement that the petition filed on 9 September, 2002, "should have been submitted with Applicants being accorded large entity status."

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition is GRANTED.

This application became abandoned on 22 January, 2001, for failure to timely reply to the Notice to File Missing Parts mailed on 21 November, 2000, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 29 August, 2002. The petition filed on 9 September, 2002, was dismissed on 27 September, 2002.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

37 CFR 1.28(c) states, "The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full."

The current petition fee and surcharge due for a large entity is \$1,410.00. On 30 January, 2002, \$705.00 was paid. Therefore, a deficiency of **\$705.00** is due. Petitioners have submitted a check in the amount of \$705.00. However, petitioner are ultimately responsible for ensuring that the correct fee is paid and **MUST** notify the Office if the above calculations are incorrect.

Small entity status will no longer apply.

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy